



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

November 26, 1996  
AO-96-31

David A. Bunis, Esq.  
Dwyer & Collora, LLP  
600 Atlantic Avenue  
Boston, MA 02210-2211

Re: Fundraising by former candidate to pay civil penalty

Dear Mr. Bunis:

This letter is in response to your October 28, 1996 request for an advisory opinion.

You represent John R. Mitchell, former City Councilor and Mayor of Fall River. On June 14, 1996 Mr. Mitchell, individually and as a candidate, and the Committee to Elect John R. Mitchell entered into a Disposition Agreement with OCPF and the Office of the Attorney General in which the Committee and Mr. Mitchell acknowledged violating various provisions of the campaign finance law, M.G.L. c. 55. Pursuant to the terms of the Disposition Agreement, the Committee disgorged all remaining funds in its campaign account and Mr. Mitchell paid a \$17,500 civil penalty to the General Fund of the Commonwealth of Massachusetts.

You have stated that Mr. Mitchell has recently been approached by family members and friends expressing an interest in helping him retire the personal debt he incurred to satisfy his civil penalty. In light of Mr. Mitchell's current financial situation, he is willing to accept such assistance and proposes to host a fundraising event for this express purpose.

You have also stated that Mr. Mitchell is not presently a public official or seeking public office. He proposes to host the fundraising event and receive all funds solely in his personal capacity. The solicitation of funds will occur through a formal, mailed letter which shall neither reference Mr. Mitchell's former positions as Mayor or City Councilor nor his campaign committee. Mr. Mitchell understands that he cannot use his former status as a political candidate in any way to seek personal financial assistance. Furthermore, Mr. Mitchell is fully aware that his campaign committee could not be used to provide personal financial assistance and, to avoid any appearance of impropriety, it is his intention to dissolve his campaign committee prior to the proposed fundraising event.

Question

You have asked if the anticipated fundraising event would be consistent with the campaign finance law.

Answer

Yes, if Mr. Mitchell dissolves his political committee prior to raising funds.

Discussion

The campaign finance law provides that any receipt or disbursement of money or any thing of value "for any fund-raising purpose . . . held on behalf of [an] individual, regardless of the purpose of said activity, shall be deemed to be a 'contribution' or 'expenditure'" if the individual is a candidate. See M.G.L. c. 55, s. 1. Also, by definition, a "candidate" includes any person who "has given consent for any committee to receive a contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made." Id. As long as Mr. Mitchell has a political committee organized on his behalf, therefore, monies raised at any fund raising event, regardless of purpose, would be deemed "contributions" and subject to all the requirements of the campaign finance law. See M.G.L. c. 55, ss. 1 and 5. See also AO-91-13 (candidate could not organize a separate committee to raise funds for certain legal expenses.)

You have stated that Mr. Mitchell is no longer seeking elected office. Of greater significance, however, you have stated that he is in the process of dissolving his campaign committee. Once he has dissolved his committee and no longer gives his "consent for a committee to receive a contribution. . . for the purpose of influencing his nomination or election. . .," he would not be considered a "candidate" subject to the campaign finance law until and unless he starts raising funds for elected public office or takes any other action specified in M.G.L. c. 55, s. 1 which would cause him to again be considered a candidate.

We assume that prior to dissolving his committee any remaining liabilities will be discharged or settled in accordance with 970 CMR 1.03.

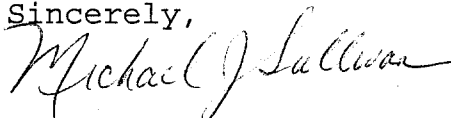
In addition, we assume that the dissolution of Mr. Mitchell's committee is bona fide. Specifically, we assume that any funds raised after the campaign committee has dissolved will be used solely to reimburse Mr. Mitchell for the amount of the penalty assessed against Mr. Mitchell, which amount he personally paid to the Commonwealth of Massachusetts, and that none of the funds raised will be used for any other purpose or in connection with a political campaign at some date in the future.

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This opinion is based solely on the representations made in your letter, the assumptions stated herein, and is limited to providing guidance within the scope of the campaign finance law. Since your question may also raise issues under the conflict-of-interest law, M.G.L. c. 268A, you should contact the State Ethics Commission for further guidance.

Should you have additional questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Sullivan  
Director

MJS/cp